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August 11, 2020

VIA ELECTRONIC MAIL AND CM/ECF

The Honorable Vernon S. Broderick
 United States District Court for the Southern District of New York
 40 Foley Square
 New York, NY 10007
 BroderickNYSDChambers@nysd.uscourts.gov

Re: *Vale S.A. v. BSG Resources Limited*, No. 19-cv-3619

Dear Judge Broderick:

We write on behalf of Vale S.A. (“Vale”) in brief response to the letter submitted yesterday by counsel to the Joint Administrators. While the Joint Administrators’ letter merely explains their decision to default on their discovery response deadline without seeking any relief from the Court, we wish to correct any misimpression that the Joint Administrators may have conveyed to Your Honor that Vale has been inflexible.

Vale’s discovery requests were returnable on July 27, 2020 and, upon request of the Joint Administrators, Vale granted an initial extension. In light of the pending application in Guernsey to discharge the administration, Vale then offered a further extension *sine die* with the sole condition being that the Joint Administrators permit Vale to submit to the Guernsey court overseeing the administration certain documents produced by the Joint Administrators that may be material to the court’s consideration of whether to discharge the administration. This condition was critical to Vale because the discharge application has been contested by a third party and thus Vale is concerned about the potential for protracted litigation in Guernsey that would delay or frustrate any discharge.

After the Joint Administrators refused consent absent the documents being filed under seal in Guernsey by Vale, which we understood would have raised issues under Guernsey law, Vale was forced to seek relief from the United States Bankruptcy Court, leading Judge Lane

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to advise the Joint Administrators that they had advanced a “preposterous notion” that certain documents they produced in their Chapter 15 proceeding should be concealed from the Guernsey court. In re BSG Resources Limited, No. 19-11845-shl (Bankr. S.D.N.Y.), Hr’g Tr. 24:11, Aug. 6, 2020. Thereafter, rather than engage Vale in any discussion (including proposing a date by which they would respond to the discovery requests), the Joint Administrators simply wrote to the Court yesterday to advise Your Honor of their decision to default.

In connection with this morning’s hearing in Guernsey, the Joint Administrators advised the court that they believed a return to solvency was achievable so long as adequate funding could be obtained (a position with which Vale disagrees) and that court further adjourned consideration of the discharge application. As the administration remains in full effect and it is unclear when or if the administration will be discharged – particularly in light of the Joint Administrators’ own position – Vale has requested that the Joint Administrators meet and confer with us this week regarding their non-compliance and, if necessary, we may bring the matter to the Court’s attention promptly thereafter. We note that the Joint Administrators have advised us that they have not been funded since October 2019, which has not stopped them from being an active participant in litigation against Vale in multiple fora. If they now suddenly decide that the lack of a commitment by BSGR’s parent Nysco to reimburse their expenses is a crippling impediment to fulfilling their legal obligations before this Court and elsewhere, Guernsey procedure permits the Joint Administrators to resign, an option which, in fact, the Guernsey court suggested this morning was available to them. If the Joint Administrators nevertheless elect to remain in place, there is no basis for them to simply refuse to comply with their indisputable discovery obligations as administrators with responsibility for a judgment debtor to Vale of more than \$2 billion.

Respectfully,

Jeffrey A. Rosenthal

cc: Frederick Hyman, Esq.